

HOW CAN THE FEC BE FIXED?

The Federal Election Commission (“FEC”) is the sole government agency entrusted with enforcing and administering the laws that govern money in our campaign system. But it is failing at that mission—and the failure of the FEC to enforce campaign finance laws has resulted in an explosion in secret spending and our politics are increasingly rigged in favor of wealthy special interests. To reduce political corruption, we need a stronger FEC.

The FEC is led by six Commissioners nominated by the president, no more than three of whom can be from the same political party.¹ To pursue investigations or take other major actions, at least four Commissioners need to agree,² which in practice means that most big decisions require bipartisan agreement.

Over approximately the past decade, Senate Majority Leader Mitch McConnell and other political elites have put forward FEC nominees who are ideologically opposed to campaign finance laws and their enforcement. Although polls show that voters overwhelmingly want the FEC to take a more active role enforcing campaign finance law, McConnell’s FEC Commissioners largely refuse to enforce the law against *anybody*, Democrat or Republican. Because the FEC needs the support of at least four Commissioners to enforce the law, just three Commissioners can paralyze the agency.

The FEC’s failure to enforce the law has made political candidates from both parties more dependent on wealthy special interests, and our elected officials more responsive to those interests than they are to average Americans.

Fortunately, there are solutions.

The simplest way to make the FEC functional again is for a President to appoint, and for the Senate to confirm, Commissioners of any party who believe in the agency’s mission. Recent administrations, both Democratic and Republican, have not prioritized the nomination of committed FEC Commissioners, but any President has significant authority to strengthen the FEC and reduce political corruption by nominating only Commissioners who believe in the agency’s mission.

Congress could also pass a new law restructuring the FEC to prevent deadlocks and increase accountability. For example, the House has already passed the “For the People Act,” H.R. 1,³ which would:

- **Amend the law so that less than a majority of Commissioners can no longer make significant decisions on behalf of the agency.** Currently, just three out of six Commissioners can override the nonpartisan staff attorneys’ recommendations to investigate a candidate or political group for violating the law. Requiring a majority vote to *reject* staff recommendations would prevent three Commissioners from shutting down enforcement actions at an early stage—and would still retain the enforcement procedures and due process protections currently in place.
- **Change the number of FEC Commissioners to five to avoid deadlocks.** Changing the number of FEC Commissioners to an odd number, and allowing the president to nominate a chair, would bring the FEC’s structure more closely in line with other independent regulatory agencies, like the Federal Communications Commission. Doing so would also improve the transparency, public understanding, and accountability of the agency.
- **Reform the Commissioner selection process to increase the likelihood that FEC Commissioners will be committed to the mission of the agency.** While Commissioner nominations are ultimately up to the President, creating a **nonpartisan advisory panel** to identify and recommend qualified nominees would limit the ability of Congressional political elites to stack the FEC with ideologues. The panel could announce its recommendations publicly, which could create public pressure on the President to defer to those recommendations.

ABOUT THE CAMPAIGN LEGAL CENTER

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization based in Washington, D.C. CLC holds candidates and government officials accountable regardless of political affiliation. CLC was founded in 2002 by Trevor Potter, former Chairman of the Federal Election Commission. Our work today is more critical than ever as we fight the current threats to our democracy in the areas of campaign finance, voting rights, redistricting, and ethics. Learn more at campaignlegal.org.

¹ 52 U.S.C. § 30106(a)(1).

² *Id.* § 30106(c).

³ See H.R.1, 116th Cong. § 6002(a)(1) (2019); see also Daniel I. Weiner, *Fixing the FEC: An Agenda for Reform*, Brennan Ctr. for Justice 5 (2019), https://www.brennancenter.org/sites/default/files/2019-08/Report_Fixing_FEC.pdf.